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LAW AND LIBERTY.*

Law is the condition of Liberty. Where Law is not, Will prevails, whether it be the Will of the One or of the Few or of the Many. Law is not the foundation of the State but the norm and regulation of the Force or Power that founds and maintains the State. Law makes it possible for the State and the people of a State to live a life of Liberty. Law is not a restriction on Liberty, it makes an arena, a canal for Liberty and thus energises it so that it may not overflow its banks. Whether, as in early times, in the form of Custom or later, in more political times, in the form of written Law, made by the deliberate and conscious action of man, Law has prevented the arbitrary will of man or any body of men from governing and regulating the life of the State. For, the properties of law, as Burke pointed out, are, *firstly*, that it should be known; *secondly*, that it should be fixed and not occasional, and, if we may add a *third* characteristic from Aristotle, that it is observed, for, to enforce obedience to the law, which it makes, is a proof of a good constitution of a State. While Law can be without Liberty—there can be systems of law made and developed by despotic governments like those of the ancient East and the later Roman empire—Liberty cannot exist without Law. The history of Liberty is in a large measure the history of the influence of Law in the government of man. At first whether primitive society was, as I believe, largely patriarchal and only exceptionally matriarchal, or not, Custom was the law of society.

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The Leges Barbarorum of the German tribes, the Torah of the Jews, the Dooms of early English peoples, the Customs of Indian castes and tribes gave these peoples regularity, restraint and routine.

The rulers of custom-bound peoples were hardly despotic. They were as much bound as the peoples whom they governed. And then, when as a result of war and conquest, the authority of the chief increased, Custom gradually was transformed into Law. It came to be written, and codified. The Code of Hammurabi, the Twelve tables of Rome, the Brehon Laws of ancient Ireland, and the Code of Manu were still further steps in the growth of the influence of Law in human society. And this growing influence was in the direction of Liberty. For, however much restraint these ancient systems of Law may have placed on the activities of individuals or groups, they left still considerable areas of human activity to the freedom of individual initiative and movement. Even when they ruled a large part of man's life, as in the Code of Manu, yet they served the cause of Liberty, for, being written, known for certain and of general application, they freed man and society from the tyranny of the arbitrary will of individuals or groups.

No further step forward in the promotion of Liberty by Law could be taken as long as Law, as a result of this codification, was itself unfree. The principle of freedom had to be introduced into Law itself before Law could serve the cause of freedom. This work had been done for Europe in the later history of Roman Law. The Prætor's Edict, the Responsa Prudentium, and the Emperor's Rescript applied Reason to the development of the Law. But the Reason was that of a despot who legislated according to the maxim *Quod principi placuit, legis habet vigorem.* The will of the Prince had the force of law. Progress, but not freedom, could be served that way. It was with the coming of new peoples and of a new way and philosophy of life that Freedom was to enter into the history of Law. It was with the coming of the German tribes and of Christianity into Europe that the history of the relations between Law and Liberty begins. The primitive republicanism of the German tribes, their corporate life and self-government, their attachment to custom, and their ignorance of the State, would not tolerate the centralized despotism of the later Roman empire. And Christianity which came to meet the Roman empire as a

corporate Church, and with claims to the freedom of religious life was fundamentally opposed to absolutism in Law or Politics. These two influences combined soon began to operate on the Law of Europe in the direction of Liberty. The German tribes brought with them the idea and the practice of the people having a part in the making of law and the administration of justice. And the seeds of parliamentary government and the jury-system, these two props of English Liberty, were sown, though through royal Norman drills. Christianity, with the novel institution of the Church, unknown to pre-Christian times, and its own law, Canon Law, cut away large slices from the jurisdiction of the State and secular law. As you know, till late in English history Marriage and Will were under the jurisdiction of ecclesiastical courts. The principles of Equality, Liberty and Justice came gradually to be introduced in the tribal law and customs of the Saxons, the English and the Danes and slowly humanized and rationalized the administration of criminal justice. The rules of equity and good conscience influenced the decisions of the Court of Chancery. That, according to Maitland, saved Liberty against Roman jurisprudence and despotism. The Will, that instrument of liberty and progress, came to modify the rule of the dead hand of the customary disposal of property by Primogeniture or Borough English.

The Roman Imperial polity did not fail to influence the constitution of the early mediæval monarchies. It was especially in the field of judicial administration that this was felt. The Normans in England, Southern Italy and Sicily, the Capets in France took their idea of a royal, centralized administration of justice from the traditions of Roman imperial rule. To confine ourselves to England from whom we derive our modern system of administration of Justice, it was in the first place good for the development of Liberty that the court of justice was the first form of administration to shoot itself out of the royal court and household. The Judiciary thus acquired prestige and power which was to stand it in good stead and serve the cause of Liberty. The centralisation of the royal courts, which also went on eyre or circuit all over the country, the staffing of the judicial bench by professional justices, the building up of a common law out of the laws of the English as well as of ideas from Canon Law, French capitaluries and from the Roman law-books, and the superiority of this royal justice in speed and

satisfaction to the old courts of the hundred and the shire, and to the new manorial courts of the feudal barons, brought about the legal unity of England.

The jury which was in its origin "French rather than English, rather royal than popular, rather the livery of conquest, than a body of freedom," brought popular representation into the administration of justice. Not only the Bench, but the Bar was early organized in England. The Bar in England also began its existence under royal auspices under Edward I, a process the details of which are still very obscure, and was instituted by the king. This brought the professional pleaders and the professional attorneys under the control of the judges and began to secure a monopoly of practice to those that had been formally ordained to the ministry of the law. The Inns of Court consisting of practising lawyers combined themselves into a guild of lawyers and had a monopoly of legal education. About that time members of the Bar began climbing to the Bench and the judges were ceasing to be ecclesiastics. About that time, the old Curia of the Norman kings was dividing itself into the King's Bench, the Court of Common Pleas or the Common Bench, the Court of Exchequer, and the great Court of Chancery. Another cause that contributed to the development of the Judiciary as a free and powerful institution was that the development of the la v was largely in its hands. Parliament was not in those days so fond of making laws as it is to-day. Although the Parliament of the 13th and 14th centuries did legislate in general, they left the ordinary law of the land and the development of the common law to the lawyers. Even in the time of the Tudors and the Stuarts the Star Chamber and the Chancery, although they were dangerous for Liberty, served to preserve Common Law for, but for these institutions, as Maitland has shown, the old-fashioned national, law unable out of its own resources to meet the requirements of the new age of commerce, maritime development and colonization and international intercourse, would have utterly broken down and the "ungodly jumble," as Cromwell called, it of English common law would have made way for Roman jurisprudence and for despotism.

It was these traditions of a centralized, free and independent Judiciary that came to India when the foundations of the British administration of justice were laid in the country. As in

Meetings Acts, Defence of India Acts and by the use of old Regulations like that of 1818 to be explained by peculiar and temporary conditions and circumstances. Yet the core of Liberty stands. In India, as in England, whatever restrictions on fundamental liberties exist, are to be found in the civil and especially in the criminal law and not in administrative powers or discretion. The separation of powers is not provided for, but is recognised by the Government of India Act, though the independence of the Judiciary is assured by the provisions in regard to the tenure and salaries of Judges of the High Courts and the Federal Court. The separation of powers is not absolute and rigid in British India. Nor is it in England and in the U.S.A. Montesquieu's doctrine which was based upon a misunderstanding of the facts of the English constitution, has to be interpreted in the sense of Madison, one of the makers of the constitution of the U.S.A., namely, "that the whole power of one department should not be exercised by the same hands which possess the whole power of another department." Otherwise the Ministry could not be part of the Legislature as in England and the Senate could not take part in the executive act of appointment of judges and other high officials in the U.S.A. And on the *vexata quaestio* of the separation of the Executive from the Judiciary in India, this argument I have not found used by the supporters of the small admixture of judicial and executive functions, which obtains in the case of English justices of the Peace as in that of Indian Collectors and Magistrates. But the strongest shield of Liberty, the independence of the Judiciary is secured. It would be still more secure if, except in regard to appointments which, everywhere is the function of the Executive, administrative functions in regard to postings, transfers and promotions lay in the hands of the Head of the Judiciary; but since the Head of the Judiciary is not part of the Executive as in England in the person of the Lord Chancellor, executive influence in these matters could be secured by regular consultation between the Head of the Judiciary and the Head of the Executive.

Following the traditions of the English Courts, Courts of Law in India have acted as defenders of individual Liberty. In the great line of English judicial decisions that have secured the rights and liberties of the subject may be added cases decided in the Indian Courts. The decision in '*Secretary of*

State for India v. *Moment*[1], secured to the subject the right to sue the Secretary of State in Council in any case in which he could have similarly sued the East India Company. In *Ameer Khan, In re*[2], although the judges allowed that common law rights and liberties could be suspended by statutory enactment they granted that the Liberty of the subject was the unwritten law of the constitution. The case of the *Inhabitants of Mahalingapore* v. *Anderson*, like *Phillips* v. *Eyre*[3], established the principle that a Governor is liable to an action in England for a wrong done by him during his government. *Arnold* v. *The King-Emperor*[4], affirmed the principles of the freedom of the Press for, "the freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length the subject generally may go, so also may the journalist, but apart from statute law his privilege is no other and no higher." These are illustrations of the way in which in India, as in England, the Courts of Law have come to the defence of the Liberty of the subject.

It is not merely against the Executive that the Judiciary acts as the shield of Liberty. As a consequence of the modern democratic theory, the Legislature which is the representative of the people is considered to be the supreme power in the State. And, as the modern State, according to the same theory, is omnipotent and omnicompetent, so the Legislature also is said to possess omnipotence and omnicompetence. It is against such a powerful legislature that defences have to be thrown up in the interests of Liberty. This was realized not the other day but at the time the constitution of the United States of America was established. There, for the first time in the history of the world, the people of a large modern State had charged themselves with the right and duty of government. And jealousy of executive power which their relations with the English monarchy had taught them, directed that they should make their legislature powerful. Some of the makers of their constitution already realized the risks of a powerful legislature dependent on democratic election. One of them, George Cabot, said, "There will be neither justice nor stability in any system if some material parts of it are not independent of popular control." Alexander

1. (1912) 24 M.L.J. 459: L.R. 40 I.A. 48: I.L.R. 40 Cal. 391 (P.C.).
2. (1870) 6 Beng.L.R. 392.
3. (1870) 6 Q.B. 1.
4. (1914) A.C. 644.

Hamilton said while the constitution was in the making in the Convention, "the members most tenacious of republicanism are as loud as any in declaiming against the evils of democracy. Give all the power to the many and they will oppress the few." One of the most powerful means by which the framers of the constitution of the United States of America hoped to check democratic tyranny was the establishment of an independent, impartial, and stable Judiciary. The Judiciary was made independent of the Executive and of the Legislature. "It was their duty", said Mason of Massachusetts, "to expound not only the laws but the constitution also; in which is involved the power of checking the Legislature in case it should pass any laws in violation of the constitution." That constitution made the Judiciary its defender for, in Art. 6 it was laid down that "this constitution and the laws of the United States which shall be made in pursuance thereof and all Treaties made or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." Thus the Judiciary was made defender of the constitution; it was given the right to pronounce judgment on the constitutionality and legality of any law passed by any legislature or by any executive order or direction. Although the people were the ultimate makers and amenders of the constitution, the Judiciary was made the guardian of the constitution as it exists. Thus the Judiciary became the balance wheel of the constitution. And from the beginning the Judiciary fulfilled this duty of defending Liberty against the invasions of the Executive or of the Legislature. Chief Justice Marshall stands out as the defender of the constitution and of Liberty during his long tenure of 34 years of the office of Chief Justice of the Supreme Court. From the case of *Marbury* v. *Madison*[1], when the writ of mandamus was awarded against the administration for the performance of executive acts which they refused to perform, although they were required by the constitution to perform them, through the case of *Aaron Burr*[2], when he destroyed the attempt to set up a law of "constructive treason," and *Fletcher* v. *Peck*[3], when the

1. Cranch, 137, 2 L. ed. 60.

2. *See* account of the trial in Beveridge's Life of John Marshall Vol. III.

3. 6 Cranch, 87, 3 L. ed. 162.

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Court declared a state law impairing the obligation of contracts invalid, down to *Worcester* v. *Georgia*[1], when he declared that the Chirokee nation "is a distinct community occupying its own territory in which the laws of Georgia can have no force and which the citizens of Georgia have no right to enter but with the consent of the Chirokees themselves or in conformity with treaties and with the acts of Congress." Marshall defended individual Liberty against the onslaughts of the Executive, the States, and the Legislature. And the tradition set up by Marshall has been followed by the Judiciary of the United States of America ever since—to the detriment of progress perhaps, but in the interests of Liberty.

Like the United States of America, India also has a written and a federal constitution. Although the federal constitution set up by the Government of India Act of 1935 is *sui generis*, extraordinary, peculiar and unique, like nothing on earth in the history of federation, yet it has some of the fundamental principles of federal constitutions. It is a written, rigid constitution, with an efficient but not absolute separation of powers, with checks and balances, no power being sovereign, Indian States and British Indian Provinces brought under one umbrella and the whole system of government being placed under the protection of a constitution which is the supreme law of the land. And the defender of this constitution and therefore of Liberty against the interference of Executive or Legislature is the Judiciary. The High Courts and Subordinate Courts have always had the right and the power to pronounce on the validity of laws passed by the not sovereign legislatures of India. But the Government of India Act of 1935 has placed the constitution under the special protection of a new Court for all India—the Federal Court. It is a Court of record like the High Courts; it is to have, to the exclusion of any other Court, an original jurisdiction in any dispute between the Federation or any of the Provinces or any of the Federated States and in so far as the dispute involves any question (whether of law or government) on which the existence or extent of a legal right depends, although the extent to which the Court has jurisdiction over disputes to which a State is a party, is limited by the terms of the Instrument of Accession by which the State agrees to enter the Federation. As from High Courts in Federated States

1. 6 Pet. 515, 8 L. ed. 483.

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appeals are to lie to the Federal Court on questions of law concerning the interpretation of the Constitution Act or of an order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by the Instrument of Accession of the State or which arises under an agreement made in relation to the administration in that State of a law of the Federal Legislature. In spite of the serious limitations on the jurisdiction of the Federal Court, in the Indian States that federate, it is a great step forward that disputes between individuals and individuals and States and States and Provinces and Provinces and all of them and the Federation in regard to matters provided for in the Act should become justiciable in a Court of law common to all India. It is not only the first step towards the legal unity of India but a long step forward in the protection of Liberty in India. Although Treaties are not *ipso facto* the law of the land in the British Empire as in the United States of America, yet the consideration that they may become evidence in cases before the Federal Court in which the States are interested may bring them up for judicial interpretation. One provision in the Act may detract from the repute of the Federal Court as a Court of law. It is S. 213 which empowers the Governor-General to consult the Federal Court on questions of law of public importance. This, although allowed by the analogy of the Judicial Committee of the Privy Council and Dominion practice, infringes the principle of the separation of powers and the salutary principle that Courts of law should adjudicate only on specific issues raised as a matter of fact before them. It is no part of the business of a Judiciary to act as the adviser of the Executive. The Executive must take responsibility for its acts; enough legal advice is available to it, and it must not be allowed to justify its action in shelter behind the Judiciary and the Judiciary must not in any way or to any extent mix itself with executive action.

The inconveniences of this consultation have been pointed out in the Dominions but the danger to Liberty was sensed by Chief Justice Marshall who, when asked by President Washington to give an advisory opinion as to the validity of certain treaties with France, held, "that the Supreme Court was merely a legal tribunal for the decision of controversies brought before them in legal form." The Missouri Compromise delimiting the

regional legality of slavery declared unconstitutional by the famous *Dred Scott case* 37 years later which precipitated the greatest civil war in history, is an illustration of the danger to which a country may be subjected by the resort to consultation by the Executive of the Judiciary in justiciable matters. The controversy over the Missouri Compromise and the *Dred Scott case* would have been still more disastrous if the action of the Government had been supported by judicial opinion.

The place of the Judiciary in a federal constitution as in a State where the Rule of Law obtains makes for eminently a "government of laws and not of men." A government of laws is a free Government because it is above the caprice and will of one man or a body of men. The "law of the land" was the battle cry of those that won the Magna Charta in England and the "due process of law" is the American guarantee of Liberty. "Liberty to be enjoyed must be limited by law," said Burke, "for law ends where tyranny begins and the tyranny is the same, be it the tyranny of a monarch or of a multitude—nay the tyranny of the multitude may be greater as it is a multiplied tyranny." It is only

> " Where Sovereign law, the State's collected will,
> Over Throne's and globes elate,
> Sits empress, increasing good, suppressing ill,"

that Liberty is secure.

Perhaps an apology is needed for placing these elementary truths and facts connected with the administration of Law and Justice before a body of lawyers. I find an excuse for this exploitation of the obvious, as some of you may be tempted to characterise my observations, in developments in Law that have taken place in certain countries in our generation. We have lived into times when the old notions of the supremacy of Law over government, of the guarantee of individual Liberty by Law, of the State being under the Law have been questioned and treated with scorn. The characteristic note of the judicial life of the State of the Dictators is that Law is not so much the guardian and defender as the faithful and obedient servant of the State. Here, in regard to Law under the National Socialist State of Germany, is the authoritative statement of Dr. Franz Gurtner, Reich Minister of Justice who contributed an article to a collection of essays by leading members of Party and State called "*Germany speaks*" recently published in England. "The doctrine," he says, "that demands that the interests of the

individual must be regarded as the principal subject-matter of all legislation and that a comprehensive system of controls must be established to protect the individual against an excess of interference by the State," is no longer upheld in Germany. National Socialism, we are told, "looks upon the community and the nation as an organism which has its own rights and duties and whose interests come before those of the individual". The lawyer under the Nazi regime is to espouse not the interests of the individual but those of the whole nation. But the climax of this dangerous development of Law was reached on 28th July, 1935, when a law was passed which abolished the maxim according to which no offence can be punished unless it is specially mentioned in the existing Code. This law entitles the judge to inflict punishment for acts which, although not specifically mentioned, are yet "of such a nature as to demand punishment in pursuance of the general terms of the law and in accordance with healthy, national sentiment." This doctrine of 'constructive crime' is the *ne plus ultra* of a lawless system.

May I end with an appeal from one who is a citizen rather than a lawyer, to this eminent body of lawyers? According to the English system, the Bar is an integral part of the judicial administration. Judicial enquiry into a dispute consists, for the main part, in a debate between learned counsel representing the two parties to the dispute. In the United States of America they have an expressive phrase to describe this process. The lawyers are said to be engaged in "trying the case". The integral and efficient part played by the Bar in the administration of Justice in England and in the United States of America has been made possible by the learning, the high tone, and the independence of the Bar. The independence of the Judiciary, so necessary in a free State, is dependant on the independence of the Bar. And independence of the Bar can be attained only if members of the Bar keep to the highest standards of professional conduct and character. All these qualities of the Bar in England and the United States of America are to be traced to the unity and corporate life and status they have enjoyed from the earliest times. That the Bar in Madras may grow in that incorporated unity, freedom and independence so necessary to the free and progressive administration of Justice must be the wish of every one that believes in the vital connection between Law and Liberty.

SUMMARY OF ENGLISH CASES.

CAXTON PUBLISHING COMPANY, LIMITED *v.* SUTHERLAND PUBLISHING COMPANY, (1939) A.C. 178 (H.L.).

Copyright Act (1911), Ss. 6, 7 and 10—Infringement—Damages for infringement under S. 6 and damages for conversion under S. 7—Remedies whether cumulative or alternative—Limitation under S. 10 for commencement of proceedings—Act of conversion—What constitutes—Measure of damages.

The plaintiffs are the owners of the copyright in a book "Heating and Ventilating" and defendants, the publishers of a book "The Modern Practical Plumber". The defendants admitted that portions of four sheets of their book are infringements of the plaintiff's copyright. The plaintiffs by their writ claimed (1) an injunction restraining infringement, (2) an inquiry as to damages, and (3) delivery of all infringing books and materials. The defendants admitting the infringement contended (1) that the plaintiffs were not entitled to both damages for infringement of copyright under S. 6, sub-S. 1 and at the same time damages for conversion under S.7; (2) that the limitation of 3 years under S. 10 applied to the claims under S. 6 as well as S.7; (3) that the conversion was the printing or binding and not the sale; and (4) that the damages were not to be calculated by finding the price of their complete work and then attributing to the plaintiff's copyright some portion of that price but was the value of the plaintiff's work to the plaintiffs as contained in the four sheets. (At the hearing before the House of Lords they were content to take the binding as the act of conversion and both sides accepted that if damages for conversion were to be calculated by reference to the value of the whole volume the proportion was to be one-twentieth.)

Held, (1) that the remedy of damages for infringement provided by S. 6 and the remedy of damages for conversion provided by S. 7 are not in law mutually exclusive and that the plaintiffs are entitled to recover under both heads.

(2) that the three years' limitation provided in S.10 applies to a claim of damages for conversion under S. 7.

(3) that the act of conversion was the binding of the infringing sheets with the innocent ones.

(4) that the plaintiffs being fictional owners of the infringing copies, where the infringing copies are found in a setting created by the defendants, the Court in assessing the damages, is entitled and bound to take that setting into account and that will be fairly done in taking some proportion of the total value of the book after

making due allowances for expenses incurred after the act of conversion.

(1936) Ch. 323; affirmed. (1938) Ch. 174, reversed.

RADCLIFFE *v.* RIBBLE MOTOR SERVICES, LTD., (1939) A.C. 215 (H.L.).

Master and servant—Liability of master for accident to servant caused by another servant—Defence of "common employment"—Limits.

The respondents were the owners of a number of motor coaches and omnibuses used for private hire and public transport. *R* and *J* were drivers employed by them and on a certain day three coaches were hired for one party, and two single coaches for two others by the same firm of transport agents. All three parties were bound for the same destination. After discharging the parties the coaches were returning to the garage. *R* who was driving one of the coaches stopped his coach and got down and *J* who was driving another coach while pulling out to get in front of the first coach and passing close to it inflicted injuries on *R* who died of it. In an action under the Fatal Accidents Act by *R's* widow,

Held, there are conditions in which the law will not hold a master liable for injuries caused to a workman by the negligence of his fellow workman employed by the same master and engaged in a common employment with him. But in the present case, having regard to the nature of the employment there was no common work justifying the conclusion that the deceased man's contract of employment was subject to the fictitious implied term that he assumed the risk of his fellow servant's negligence while driving his employer's coach on the highway on a separate job. The doctrine of "common employment" did not apply. History of the doctrine discussed.

Decision of the Court of Appeal, (1938) 2 K.B. 345, reversed.

GOVERNMENT OF THE REPUBLIC OF SPAIN *v.* S. S. "ARANTZAZU MENDI", (1939) A.C. 256 (H.L.).

*International law—Comity of nations—*De facto *Government of a State—If foreign Sovereign State entitled to immunity from being impleaded in English Courts—Writ* in rem *for arrest of a ship which a* de facto *foreign government claimed to be in possession or entitled to possession—Validity.*

The Republication Government of Spain requisitioned the ship in question and other vessels for public services. The ship was then on the high seas and on her arrival in London on 11th August, 1937, the owners issued a writ *in rem* for possession and in pursuance thereof was arrested by the Admiralty Marshal in the Surrey Commercial Docks. To that writ the Republican Government entered a conditional appearance. On 28th March, 1938, General Franco issued a decree requisitioning the ship for public services. On 11th April, 1938, the owner's action was discontinued but the vessel still remained under arrest and on 13th April, the managing director of the owners made a notarial declaration that he consented to the order of requisition and held the vessel at the disposal of the Nationalist Government and the master made a similar declaration. On the same date the Republican Government issued the present writ *in rem* against the vessel and its late master for an adjudication of possession of the ship to them. The Nationalist Government sought to set aside the writ on the ground that it impleaded a foreign Sovereign State which was unwilling to submit to jurisdiction of the Court.

Held, affirming the Courts below, that the Nationalist Government of Spain represented a foreign Sovereign State which could not be impleaded and that was established by the Foreign office letter to the Court that "the Nationalist Government now exercises effective administrative control over all the Basque Provinces of Spain and is not subordinate to any other Government in Spain". The right of the Marshal who merely arrested the ship is not possession but custody and the Nationalist Government was in possession of the ship at the material date. Though the writ was against the ship, the Nationalist Government was impleaded as they were in possession. So the action must be dismissed.

VITA FOOD PRODUCTS *v.* UNUS SHIPPING CO., LTD (IN LIQUIDATION), (1939) A.C. 277 (P.C.).

Contract—Bill of lading issued from Newfoundland providing that contract shall be governed by English Law—Bill of lading not containing statement required by Newfoundland Carriage of Goods by Sea Act, 1932, S.3—Action for damages to goods against shipowner in Nova Scotia—Law applicable to the contract.

By some error or inadvertance, the bills of lading (for having shipped to the appellants in respondent's ship from Newfoundland) were on old forms and did not incorporate the Hague Rules which had been adopted by the Carriage of Goods by Sea Act (Newfoundland). After setting out the exceptions of sea and

other perils and exemption from liability for all damage capable of being covered by insurance and exemption from damage from negligence of shipowner's servants, etc., the bills provided that the contract shall be governed by English Law. The bills did not contain an express statement that they are to have effect subject to the provisions of the rules as required by S. 3 of the Newfoundland Carriage of Goods by Sea Act, 1932. In an action by the appellants in Nova Scotia against the shipowners for damage caused to the goods admitted as due to the captain's negligence in navigation.

Held, the proper law of the contract is the law which the parties intended to apply and the intention expressed in the contract will be conclusive and English rules relating to the conflict of laws must be applied to determine how the bills of lading are affected by the failure to comply with S. 3 of the Newfoundland Act. On a true construction of the Statute, S. 3 is directory and not obligatory and failure to comply with its terms does not nullify the contract contained in the bills of lading.

The Torni, (1932) P. 78, not followed.

Even on the footing that the bills of lading were illegal the respondent would fail either because it was a party to an illegality avoiding the contract or alternatively because the contractual exemption could not be ignored. The respondents were not liable for the damages.

THE WESTHOUGHTON COAL AND CANNEL CO. *v.* WIGAN COAL CORPORATION, (1939) 1 Ch. 393.

Mining—Artificial water-course constructed in a mine—Escape of water into lower mine—Liability for damage—Principles.

If an artificial channel has been constructed in a mine, the maker of such artificial channel is not liable for all time for damage to another mine, if water should at any time escape down the artificial water-course into the neighbouring mine, by reason of the acts of the owner of the lower mine or other parties, done after the construction of the artificial water-course. The maker of an artificial channel is liable to the owner of the lower mine for damage caused by escape of water if it is due to the increased burden. If the construction has not increased the burden to any appreciable extent, there is no liability. The time when the question whether there is such an appreciable increase of the burden on the adjoining mineowner with regard to the water, falls to be considered, must be the time, when the artificial water-course is con-

structed and the material circumstances must be those obtaining on that date.

KNIGHTSBRIDGE ESTATES TRUST, LTD. *v.* BYRNE AND OTHERS, (1939) 1 Ch. 441.

Mortgage—Redemption—Postponement of—If must be for a reasonable time—Provision for redemption in eighty equal half yearly instalments—If a clog on the equity of redemption—Rule against perpetuities—If applicable to mortgages.

The respondents, the owners of a large freehold estate owed on a mortgage dated 6th May, 1927, carrying interest at 6½ per cent. per annum 3,00,000*l.* to a certain company. In January, 1931, the appellant society agreed to grant to the respondents a loan of 3,10,000*l.* at 5¼ per cent. interest per annum repayable over a period of forty years by half-yearly instalments, the whole money to become payable on any default. On 6th November, 1931, a mortgage embodying the agreement was executed in favour of the appellants. On 25th February, 1937, the respondents issued a writ claiming to be entitled to redeem the mortgaged property on the usual notice notwithstanding the provision for repayment by eighty instalments spread over forty years, claiming that "the condition is illegal and void as a clog on their right to redeem and renders it irredeemable for an undue length of time and is not capable of being enforced".

Held, reversing the decision of Luxmoore, J., in (1938) Ch. 741. The proposition that a postponement of the contractual right of redemption is only permissible for a "reasonable" time is not well founded. Even assuming it must be reasonable, there is nothing unreasonable in the mere extension of the period for forty years in the circumstances of the present case.

A postponement of a contractual right of redemption for forty years cannot properly be described as a clog on the equity of redemption. Equity will grant relief only where as in (1912) A. C. 565, the contractual right of redemption is illusory or where there is something oppressive or unconscionable in the transaction.

Held, further, affirming Luxmoore J.'s decision. The rule against perpetuities has never been applied to mortgages and it would not be right now to hold that the rule was applicable to mortgages.

In re VAUX. NICHOLSON *v.* VAUX, (1939) 1 Ch. 465.

Wills—Trust or powers under which an interest can be created to take effect more than 21 years after a life in being at the death

of the testator—If offends rule against perpetuities—Benefit under settlement after will—Rule against double portions—When applicable.

The testator died on 25th November, 1925, leaving his widow, two sons and two daughters. All the children attained 21 and one son died after attaining 21 in 1936. By the will dated 27th November, 1919, the testator after devising the estate on usual trusts to his executors and trustees, gave the widow a life interest to be cut down on her remarriage and directed the appropriation of two sums of £20,000 each for each of his daughters; and by cls. 11 and 12 of the will disposed of the residue. Cl. 11 was as follows: "As to the residue my trustees shall . . . . . apply both the income and capital, in their absolute discretion for the benefit of all or any one or more of my children or the issue of any deceased child of mine. And . . . the trustees may within 21 years from decease accumulate the surplus of any income of the residuary trust fund . . . and add it to the trust fund . . . . . " Cl. 12 was in the following terms, ". . . I authorise and empower the trustees to deal with the fund as I could have done if living save only that all such dealings shall be within the limitations prescribed by law". Subsequently on 9th September, 1924, he settled 2,000 shares in a company on each of his four children.

Held [reversing (1938) Ch. 581]: (1) The power conferred by cl. 12 of the will was valid by reason of the saving words at the end though the trusts declared in cl. 11 were void as offending the rule against perpetuities as the trust is one under which an interest can be created at a date more than twenty-one years after any life in being at the death of the testator. (2) In the circumstances of the case the settlement of 9th September, 1924, in favour of the children has no reference and cannot be treated as having any implied reference to the benefits conferred upon the settled parties by the will and was not an advancement of the gifts by the will. The rule against double portions was not applicable.

In re A DEBTOR. DEBTOR *v.* OFFICIAL RECEIVER, (1939) 1 Ch. 489.

Bankruptcy Act (1914), Ss. 26 and 108 (1)—Jurisdiction to rehear and review—If terminated by discharge in bankruptcy—Discharged bankrupt—Jurisdiction of Bankruptcy Courts to make binding orders on.

On 30th June, 1936, the debtor applied for his discharge. At that time the receiver made an application under S. 51 (2) of the Bankruptcy Act for an order for the payment of a portion of his

salary by the debtor to the trustee in bankruptcy. In the discharge application it was found (*i*) that the assets were insufficient to pay 10*s*. in the pound; (*ii*) that the bankrupt had brought on his bankruptcy by unjustifiable extravagance in living. On 15th December, 1936, an order was made. It suspended the discharge for six months and discharged him as from the expiration of the six months "without prejudice to any application or order under S. 51 (2)." The application by the receiver was ordered on 17th December, 1936, directing the payment by the bankrupt a sum of £312 annually during the bankruptcy to be continued monthly until the Court ordered to the contrary. Liberty was reserved to either party to apply. It was the intention of the Registrar that the payment of £312 should continue to operate even after the six months' suspension had elapsed. It was also in contemplation that after the debtor had cleared the undischarged income-tax liability towards which he was paying £20 per week an additional sum would be ordered to be paid. In fact the bankrupt continued to make the payment for nearly a year after expiry of six months. Then his solicitors took the point that under the order the obligation to make the payments came to an end when the discharge date arrived and claimed repayment of the sums which had been paid subsequent to the discharge. On 6th July, 1938, on an application the Registrar declared (*i*) that the Court had no jurisdiction to make it a condition, in granting the bankrupt his discharge subject to a suspension that the same be without prejudice to an order to be made under S. 51 (2) in so far as that order is intended to operate after the period of suspension runs out; (*ii*) that the order dated 17th December, 1936, was not made under or by virtue of the words 'without prejudice' in the order of 15th December, 1936, but under the powers conferred by S. 51 (2) which can be exercised at any time up to the discharge of the bankrupt taking effect and that such an order comes to an end on the discharge becoming effective; and (*iii*) "During bankruptcy" in the order of 17th December, 1936, refer to the period during which the bankrupt remained undischarged. The Registrar at the end of his judgment indicated that if the Court had jurisdiction, it can review its previous order of discharge and make an order of the kind which it had intended to make originally. The Official Receiver accordingly made an application for review under S. 108 (1) of the Bankruptcy Act and the Registrar altered the order of discharge. On appeal by the bankrupt,

Held, under S. 108 (1) Courts have power to review, rescind or vary any order made by it under its bankruptcy jurisdiction and it is not terminated by a mere discharge in bankruptcy. If one

reads the provisions of S. 26 together with S. 108 (1) it is impossible to say that an imposition of a condition under the power in S. 108 (1) is not a concurrent exercise within the meaning of S. 26 (8). The jurisdiction under S. 108 (1) to rehear is one that must be exercised with great caution, but the power is there and is intended to be exercised and in a proper case ought to be exercised.

In re LONDON GENERAL INSURANCE Co., (1939) 1 Ch. 505.

Company—Compulsory liquidation—Company carrying on different kinds of assurance business—Assets how to be distributed between various classes of creditors—Assurance Companies Act, 1909, S. 3—Meaning.

The company was carrying on life assurance, bond investment, motor insurance, fire insurance, and general accident businesses and on the date of the winding up it had creditors whose claims arose exclusively out of transaction with one or other of such businesses and also general creditors whose claim did not relate exclusively to any such businesses. In a summons for directions as to whether any and which of such creditors have a security upon any and which of the company's assets,

Held,—All the creditors rank *pari passu* against all the assets of the company except in so far as the receipts of either the life assurance fund or the bond investment fund can be traced into any particular assets. The obligation under the Assurance Companies Act, S. 3 (1) to keep separate accounts of receipts in respect of the various businesses seems to be merely an obligation as to the method of keeping accounts and only if it be possible in the books of the company to trace receipts from the class of business for which a separate assurance fund has to be kept, into a particular asset any such asset would be a security for the debts of creditors arising exclusively out of that class of business.

BRADFORD THIRD EQUITABLE BENEFIT BUILDING SOCIETY *v.* BORDERS, (1939) 1 Ch. 520.

Building Societies Act, 1874, Ss. 13, 25—Society advancing loan on collateral security by builder in excess of normal amount which it would advance on the security of the house—Infringement of rules of society—Effect.

By S. 13 of the Building Societies Act the fund raised by subscriptions of members can be advanced only to members of the society and on the security of freehold and the leasehold estates by way of mortgage. The rules of the plaintiff society narrowed the limits imposed by S. 13 as to the amount which may be advanced

out of the funds to such an amount as can be recovered out of the land taken as security.

Where it was found that the directors of the plaintiff society on the collateral security of the builder advanced a loan in excess of the normal amount which they would have advanced on the security of the house to the defendant and it was a violation of the rules of the plaintiff society.

Held, a mere violation by the directors of the plaintiffs of the rules will not invalidate the transaction. So long as the transaction is not outside the powers of the plaintiffs as defined by the Act of Parliament it is not an illegal or invalid transaction or one which the plaintiffs cannot enforce.

In re NORBURY. NORBURY *v.* FAHLAND, (1939) 1 Ch. 528.

Wills—Legacy "free of duty"—Foreign duties—If payable out of estate.

Where an English testator by an English will gives a pecuniary legacy "free of duty" the only duties payable out of his estate in respect of the legacy are duties imposed by English Law, unless there are words in the will making it clear that duties imposed by the law of a foreign country are to be paid out of such estate.

TRANSPORT AND GENERAL CREDIT CORPORATION, LTD. *v.* MORGAN, (1939) 1 Ch. 531.

Contract—Sale of goods—Vendor's lien—If available in respect of ordinary commercial goods—Equitable lien—Estoppel—Effect—Agreement to finance hire purchase transactions —If "Money-lending" transactions—Companies Act (1929), S. 266—Floating charge—Notes issued within six months under trust deed executed more than six months before winding up—Validity of charge.

A trust deed of 14th July, 1937, by which Rawire, Ltd., was incorporated recited that the whole of the issued share capital of Rawires were owned by or on behalf of Warners, Ltd., and Rawires' sole business consisted of purchase of radio sets, etc., from Warners and others and subsequently entering into hire purchase agreements in respect of those goods with customers. Borrowing powers were conferred on Rawires and due payment was guaranteed by Warners. Rawires issued notes (which gave a floating charge) and on default in payment the plaintiffs a credit corporation seeking to enforce some of those notes got a receiver appointed on 18th February, 1938, under the provisions of the trust deed. The receiver collected the instalments under the hire purchase agreements

as they became due, recovered possession of some chattels on default of the terms of the hire purchase agreements and received the proceeds of sale of certain articles. Both Rawires and Warners went into voluntary liquidation by May, 1938. In an action to enforce the security it was contended that the transaction was a money-lending transaction and was invalidated by the Money-lenders Acts 1900 to 1927, and that Warners had a vendor's lien in respect of the unpaid purchase price of the goods,

Held, the transaction was not a money-lending transaction and the date of the charge is the date of the trust deed and not of the note and the notes though issued within six months of the liquidation were not invalidated by S. 266 of the Companies Act, 1929.

The equitable doctrine of a vendor's lien has never been held to apply to the sale of ordinary commercial goods. If it should apply, it has been waived by Warners and Rawires being entirely controlled by Warners, Warners are estopped from setting up such a lien. The plaintiffs and the other note holders were entitled to the security.

LEWIS *v.* DENYE, (1939) 1 K.B. 540.

Tort—Master and servant—Dangerous machinery—Failure to fence—Liability for injury—Contributory negligence—Effect.

The infant plaintiff who met with an accident while working on a circular saw sued for damages occasioned by a breach of statutory duty by the defendant to securely fence the saw. It was found on the evidence that the plaintiff knew that he could have avoided all risk by using the proper apparatus and that he failed to take reasonable care and his omission so to do must have been the effective cause of the accident.

Held, the contributory negligence of the plaintiff disentitles him from succeeding. The question of the legal effect of a breach of statutory regulation by a plaintiff on his right to sue, was left open.

HEPPENSTALL *v.* JACKSON AND BARCLAYS BANK, LTD., (1939) 1 K.B. 585.

Garnishee order—If attaches to amounts received by garnishee after service of order.

The garnishee, a bank had an order served upon them in the usual way under County Court Rules, O. 27, r. 1 attaching any debt owing by the bank on the date of service to the judgment-debtor.

On receipt of the order, the bank opened a new account for the particular customer in which the new credits, due to payments in, appeared.

Held, a garnishee order attaches no debts which do not exist at the moment the order is made and served and the applicant for a garnishee order is required both by the Rules of the Supreme Court and County Courts. Rules to swear an affidavit as to the amount of the debt alleged then to be owing to the judgment-debtor and the jurisdiction to make the order is limited to debts so proved by affidavit.

THE KING *v.* FINDLATER, (1939) 1 K.B. 594.

Companies Act (1929), S. 356, sub-Ss. (1) and (7)—Sale from house to house of "units" by which the holders were to receive a proportion of the profits of the Company and to whom return of capital was assured in 21 years—If offence under S. 356, sub-S. (1)—Ignorance that system was unlawful—If can excuse consequence of guilt.

A company through canvassers from house to house sold some "units" the features of which was that the subscribers were to be paid a portion of the profits of the Company and also return of capital to holders of unit was assured within 21 years.

Held, this constituted an offence under S. 356, sub-S. (1) and though the appellant, a director, did not know that the system was unlawful he was guilty of the offence.

MAYER AND SHERRATT *v.* CO-OPERATIVE INSURANCE SOCIETY, LTD, (1939) 1 K.B. 621.

Workmen's Compensation Act (1925), S. 43 (2) (b)—Date of disablement in a case where workman dies without having obtained certificate of death—Date of death if date of accident.

A workman after nearly a year's illness died from lead poisoning (found only on *post mortem* examination) in the course of employment. Arbitrator awarded compensation to his dependants against the employer. The employers claimed that the insurance company were bound by a policy of insurance to indemnify them against their liability to the dependants of the deceased. The insurance company contended that under Workmen's Compensation Act, 1925, S. 43, the workman must be deemed to have contracted the disease which caused his death on the day when he died—eight months after the policy had expired and so not liable under the policy.

Held, the modification in S. 43 (1) (iii) (*a*) that *disablement or suspension shall be treated as the happening of the accident* has

no application to the case where the workman had died from a scheduled disease without having obtained a certificate of disablement and without having been suspended from his usual employment and so the employers are in law entitled to the indemnity claimed.

UNITED STEEL COMPANIES, LTD. *v.* CULLINGTON, (1939) 1 K.B. 644.

Income-tax—Finance Act (1926), Ss. 32 and 33—Amalgamated Company—If entitled to deductions in respect of losses and wear and tear to machinery to which the companies which were amalgamated were entitled.

Two companies *A* and *B* were amalgamated into a new company in 1930. Companies *A* and *B* continually made losses in respect of which they were unable to obtain relief under Income-tax Act, 1918, S. 34. The *B* company was further unable to give effect to the deductions for wear and tear to machinery which it was entitled to. In respect of the deductions thus carried forward by the two old companies relief was now claimed by the amalgamated company.

Held, the case falls to be decided upon the plain construction of r. 11 as enacted by the Finance Act, 1926, S. 32. The trade is to be treated as a new trade set up or commenced at the date of its acquisition. The company is another legal *persona* and cannot claim the right to deduction in respect of losses and wear and tear of the old companies.

FISHER *v.* WINCH, (1939) 1 K.B. 666

Boundaries—Hedges and ditch—Presumption—Rebuttal by production of title deeds.

The respective position of a hedge and ditch as affording evidence of the boundary is a mere presumption and can be rebutted by the production of title deeds.

THORNETT *v.* BARCLAYS BANK (FRANCE), LTD., (1939) 1 K.B. 675.

Practice—Production of documents—Banker's books—Issue whether bank did investment business for clients—Inspection of transactions other than plaintiffs—Procedure.

The plaintiff sued the defendant her bankers on the allegation that during 1935, 1936 and 1937 *C*, the manager of the bank (who was also plaintiff's son-in-law) had in fact dealt with her securities purporting to advise her about them as if he were acting for the

bank, with the result that the whole of plaintiff's fortune was dissipated. She alleged that the defendant's manager was guilty of (1) negligence in giving her advice and (2) fraud in giving her false statements as to her investments showing her to be a rich woman with knowledge of their falsity. These were alleged to be within the scope of the manager's authority. The bank denied negligence and fraud and alleged it was not within the scope of *C's* authority to advice clients in such matters. The defendant bank filed affidavit of documents in due course. Plaintiff applied for a further discovery of a book containing records of commissions earned by the bank on sales of securities. This was resisted by the bank as to entries relating to other customers.

Held, if the defendant bank will answer the interrogatory as to the total of the half commissions earned by the bank on purchases and sales during the three years, then the plaintiff should not have inspection of the book. As the book is to a limited extent relevant, if the bank is not willing to answer the interrogatory liberty to inspect the whole book should be given to the plaintiff.

REX *v.* BOURNE, (1939) 1 K.B. 687.

Crimes—Offences against the Person Act (1861), S. 58—Procuring miscarriage—Operation performed for preserving the life of the mother—When a good defence—Bona fides—*Burden of proof.*

If the accused doctor is of opinion on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor who under those circumstances and in that honest belief, operates, is operating for the purpose of preserving the life of the mother and the burden is on the Crown to prove that the doctor did not do the act in good faith for the purpose of preserving the life of the girl. The accused was acquitted.

REX *v.* WESTON-SUPER-MARE LICENSING JUSTICES. *Ex parte* POWELL, (1939) 1 K.B. 700.

Jurisdiction—Declining jurisdiction—If case heard and determined—Mandamus.

On an application for approval of alterations to licensed premises the justices declined jurisdiction in so far as the bulk of the alterations was to premises not already licensed. On appeal,

Held, the justices had jurisdiction provided the premises when altered will still be in the ambit of the licence. The justices cannot

be said to have heard and determined the case when they declined jurisdiction in the case. Writ of mandamus should be issued.

DIES AND ANOTHER *v.* BRITISH AND INTERNATIONAL MINING AND FINANCE CORPORATION, (1939) 1 K.B. 724.

Sale of goods—Part payment of purchase price and contract to make further payments within a time -Default of buyer in making further payments—No tender nor delivery of goods by seller—Right of buyer to return of the purchase price paid—Right of the seller to damages for the breach of contract—Quantum of damages—Loss of profits which seller would have made—If to be included.

Where there is a contract for the sale of goods, and a part payment for the goods is made, but no goods are delivered or tendered by reason of the default of the buyer the seller's only remedy is to recover damages for the default, while the buyer, notwithstanding that it is by reason of his default that the contract has not been performed, is entitled to recover the purchase price that he has paid, subject to the right of the seller to set off against that claim the damages to which he can establish his title. The true measure of damages which the seller is entitled to is the loss of net profit that the seller would have made on the deal.

HALL BROTHERS STEAMSHIP COMPANY, LTD. *v.* YOUNG, (1939) 1 K.B. 748.

Insurance—Marine insurance—Policy—Construction—"Liable to pay by way of damages"—If includes special liability imposed by French Law—"Damages"—Meaning of.

A policy of marine insurance contained the following clause: "If the ship hereby insured shall come into collision with any other ship or vessel and the assured shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision........" the underwriter's liability will arise. The insured vessel was compelled under French Law to bear a particular charge in respect of damage suffered by its French pilot vessel.

Held, the very special liability imposed by French Law is not that which upon a true construction falls under the head of a sum which the assured became liable to pay by way of damages in respect of the collision. "Damages" refers to payments the obligation to make which arises from a fault of some kind on the part of the ship insured.

JOTTINGS AND CUTTINGS.

Professional Terminology.—Each calling, whether professional or other, possesses its own vocabulary of which it makes constant use, not infrequently with the result that those outside the particular calling are extremely puzzled. Indeed, it may sometimes be the case that the language used is quite unintelligible to the uninitiated. The professions which we call learned have in an especial degree a large collection of words which convey little or nothing to those not within the particular circle, a circumstance which is apt at times to provoke satirical comment. But ere we mock at the terminological vagaries, as outsiders are apt to call them, of one profession or calling we should do well to bear in mind the homely old maxim, "They who dwell in glass houses should refrain from throwing stones." To particularise, we lawyers are frequently moved to merriment by the almost overpowering technicalities, with their apparent terrific implications, employed by our medical confreres. Many readers will recall the classic instance of the young house surgeon who was called to give evidence at a trial before Baron Bramwell, a judge who was a very matter-of-fact person and liked other people to be the same, and who would always insist upon a spade being called a spade and not an agricultural implement. The prosecutor had been somewhat severely handled by the prisoner, and the house surgeon, being asked to describe the nature of the injuries, said: "I discovered considerable ecchymosis under the left orbit, caused by extravasation of blood beneath the cuticle." This sounded very dreadful, but the Baron was not so impressed with this account of the diagnosis, for he turned to the witness, and said: "I suppose you mean that the prosecutor had a black eye?" "Precisely, my Lord," answered the witness. "Perhaps," continued the judge, "if you had said so the jury would have better understood you." "Precisely, my Lord," said the witness, obviously delighted to find that the judge understood his meaning and accepting the rebuke as in fact a compliment. Jesting at the professional language of the medical profession is, however, not confined to our own country. In one of the novels of Henri Bordeaux occurs this relevant passage: *"Rien n'est plus long ni plus obscur qu'une deposition de medicin en justice. Ils n'ont pas leur pareil pour embrouiller ce qui est clair, par le moyen de mots techniques et savants."—L.T. 1939, p. 247.*

The Mote and the Beam.—While we are all quick at observing the mote in our medical brethren's eye, we have to remember the warning of Holy Writ about the beam that may be in our own "orbit", as the witness mentioned above called it; and, indeed, we

are forced to admit that in our legal terminology we have not a few words that, to say the least, are by no means easy of comprehension by what we may, without any invidious intent, call outsiders; that is, those who are not members of our Profession. Why, for example, the layman might ask, is a deed sometimes called an "assurance"? or why should some document begin with the words "Know all men by these presents" when that last word by no means necessarily denotes a gift that the grantor is making? If we continue in the territory of the conveyancer and do not, as a former member of that fraternity did, regard an abstract of title as "the finest achievement of human intelligence," we may meet with a goodly list of terms which are not such as he who runneth may read and understand. What is the ordinary man to make of a "base fee," a term which in its non-technical sense was at one time applied by disgruntled barristers' clerks to briefs on which there was nothing for themselves? Still keeping in the sphere of the conveyancer, why, it may be asked, should a house be termed a "messuage," or why should the subject of the transmission on sale of landed property, which the conveyancer calls real property, be treated under the rubric "vendor and purchaser", while the transmission of other property is dealt with under the heading "sale of goods"? It is easy to pose these questions, but, save on the explanation of deep-rooted custom, difficult to answer. Then there is that very amiable gentleman, innocent of all guile, who may be called upon to take the part of a "bare trustee"—an epithet against which he has just cause to recalcitrate. Take again an expression with which every lawyer is familiar, "fee simple," and regarding which the conveyancer might well think there was no room for dubiety, but according to Dean Beeching's Notes of an Examiner, the phrase was very far from being accounted as easy as might have been supposed. The "shots" made by the examinees included the following: "Cash down," "as easy as tipping," "simply a matter of money," "the small salary of the clergy," "quite simple," "a simple fee no bribes," "without any extra charge," but the gem of all was "a legal term for the conveying of entrails."—*L. T., 1939, p. 247.*

A Medical Critic.—Just as we poke fun, although quite good-naturedly, at the medical profession for their use of highly technical language not generally understood outside their own circle, so occasionally a medical man has ventured to criticise some of the terms employed in law. On one occasion a medical man sought to do this, but this time he, in the language of the old reporters, took nothing by his motion. "I never could comprehend," said the doctor to a barrister, "what you mean by docking an entail." "My

dear doctor," was the answer, "I don't wonder at that; it is doing what your profession never consent to—suffering a recovery."—*L.T., 1939, p. 247.*

The Morality of Advocacy.—Everyone knows how Boswell contrived to irritate his mentor by discussing every kind of subject, however absurd, that came into his mind. Among those topics which seemed to worry Boswell was that which has oftentimes been debated, namely, whether an advocate is justified in appearing for a client whose cause he feels is not supportable. Boswell quotes Sir William Forbes as saying that an honest lawyer should never undertake a cause which he was satisfied was not a just one. "Sir," began Johnson, "a lawyer has no business with the justice or injustice of the cause which he undertakes, unless his client asks his opinion, and then he is bound to give it honestly. The justice or injustice of the cause is to be decided by the judge. Consider, sir, what is the purpose of courts of justice? It is, that every man may have his cause fairly tried by men appointed to try causes.... If lawyers were to undertake no causes till they were sure they were just, a man might be precluded altogether from a trial of his claim, though, were it judicially examined, it might be found a very just claim." On another occasion Boswell reverts to the question, but Johnson again was not to be easily put out by the supposed casuistical cross-examination of his future biographer, who was not really seeking as a good disciple for instruction, but was merely trying to draw him out on a question which has often engaged the attention of moralists, but which in fact has no substance in it. It is a little remarkable, however, that Johnson who, in many matters, was extremely strict in his views, took so sensible a view of the question. As he said, "You are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the judge's decision."—*L. T., 1939, p. 263.*

Should Lawyers Solicit Employment?—This was another subject on which Boswell talked to Johnson with the object of ascertaining what he thought about it. In 1776, in a conversation between them, Boswell suggested a doubt of the justice of the general opinion that it was improper for a lawyer to solicit employment. A candidate for Parliament, Boswell pointed out, solicited votes, and if so why should not a member of the Bar solicit attorneys to send him briefs? Here again Johnson took up a sensible attitude by saying that it was wrong to stir law suits, although he went on to add that "when once it is certain that a law suit is to go on, there is nothing wrong in a lawyer's endeavouring that he shall

have the benefit rather than another." Pressing the subject further, Boswell asked whether he, Johnson, would solicit employment if he were a lawyer, and to this the doctor gave a delightful reply: "No, sir," said he, "but not because I should think it wrong, but because I should disdain it. However, I would not have a lawyer to be wanting to himself in using fair means. I would have him to inject a little hint now and then to prevent his being overlooked". It is believed that since Johnson's day the suggestion of "injecting" a little hint now and then has not been overlooked.—*L.T., 1939, p. 264.*

Advice to Boswell as an Advocate.—In the year 1778 Boswell, who, it is worth remembering, had a fair practice at the Bar in Scotland, was instructed to appear on behalf of the opponents of a Scottish road bill which was before the House of Commons. As in other matters, he thought proper to take counsel with Johnson how best to address such an audience. Johnson advised him to provide himself "with a good deal of extraneous matter, which you are to produce occasionally so as to fill up the time. . . . . When you catch a moment of attention press the merits of the question upon them." On the following day Boswell met Wilkes and mentioned to him the subject, and his advice was certainly amusing. "Be as impudent as you can," said he, "as merry as you can, and say whatever comes uppermost. Jack Lee is the best heard there of any counsel, and he is the most impudent dog, and always abusing us." To which of the two methods of approach on behalf of his clients Boswell was drawn we are unhappily left ignorant.—*L.T., 1939, p. 264.*

Johnson on Law Reports.—It might have been thought that Johnson would never trouble his head about law reports, but he appears to have been interested in them, as they were produced both in England and in Scotland. In the year 1773 he diverged from the subject of the Stuart family to the very different one of the comparative excellence of the reports of decisions in England and in Scotland. "The English reports, in general, are very poor" —readers will, of course, remember that this conversation took place nearly one hundred and fifty years ago—"only the half of what has been said is taken down; and of that half, much is mistaken. Whereas, in Scotland the arguments on each side are deliberately put in writing, to be considered by the court. I think a collection of your cases upon subjects of importance, with the opinions of the judges upon them, would be valuable." At that period the labours of the law reporters in Scotland were much lightened by the fact that the arguments were largely submitted in

writing, a practice which certainly had its advantages over the system in use in England where the arguments were orally presented to the court.—*L.T., 1939, p. 264.*

Mr. Speaker.—The Select Committee on Parliamentary Elections specially concerned with the Speaker's seat have made a report which was fully summarised in our newspapers. There is a great deal to be said on the question whether the Speaker should be a member of the House, elected as all other members are and distinguished from them only by his high qualities of ability and tact, or whether he should be an officer appointed by the Crown on the recommendation, of course, of Ministers, and hold office for a session or a fixed term of years. After full consideration the Committee conclude that things should remain as they are. Some people are fond of criticising the English Constitution, which is far from perfect; but we think they all agree that the way in which the Speaker is elected and the way in which he controls the House are models of what we may call dignified democracy such as cannot be found elsewhere. Of course, academic critics say that the Speaker must be, in some sense, a party man. He is chosen by the majority of a House of Commons which is divided into parties: and the maintenance of order and the suppression of irrelevance or tedious repetition should not (we are told) be in the hands of a party man, however fair he may be—or try to be. On the whole, the known facts fairly answer these academic critics. The fact that Mr. Speaker's constituents may want to say something violent which he cannot say for them is regarded by some people as a disadvantage. If it is, it is one which, in view of the other advantages of the system, we may well bear.—*L.J., 1939, p. 279.*

The Lord Chancellor.—Members of both branches of the legal profession hope that the rumours of Lord Maugham's desire to retire from the Woolsack are unfounded. He has in their opinion shone with effulgence unusual even for the luminous occupants of that highest of judicial places; and while the candidates for a vacancy are always good and willing, there is none better than the reigning L.C.

This troubled century is little more than 38 years old; and yet we have had no less than ten Lord Chancellors and the threat or promise of yet another in the year 1939. Lord Maugham no doubt feels that he is entitled to a period of leisure and comparative repose; and he has certainly earned it after a long, arduous and successful career at the Chancery Bar, on the Bench, and now since

the time when Lord Hailsham retired last year, on the reconstituted Woolsack.—*L.J., 1939, p. 289.*

The Derivation of L.Cs.—"It is difficult," wrote one who had studied the great subject with care, "to form any precise estimate of the surroundings which are essential for the production of a Lord Chancellor. Statistics are ever fallacious and calculations based upon averages are apt to deceive"; but he came to the conclusion that "a minister of religion is more likely to become the proud and happy father of the noblest of all officials than any other type of professional man."

This conclusion was based on the facts of the nineteenth century. During that time two rectors of the Church of England, a Scottish minister and a Dissenting preacher had severally seen their sons seated upon the Woolsack. Four legal parents—but of a mixed kind and not assignable to one species—had a similar joy. These were a Scottish advocate, a Master in Chancery, a solicitor and a barrister-at-law. One peer, one barber, one doctor and one soldier had been similarly blessed. The list of distinguished progenitors consisted of 17 names, from which it was "incidentally deducible that the average career of a Lord Chancellor is of some five years' duration."—*L.J., 1939, p. 289.*

In the Nineteenth Century.—In the first year of the nineteenth century Alexander Wedderburn, Baron Loughborough and Earl of Rosslyn, reigned as Chancellor. His father was Peter Wedderburn, advocate, of Edinburgh. To him succeeded John Scott, Earl of Eldon, whose father was successively a coal-fitter, proprietor of a public-house, and a shipowner in a small way. Thomas Erskine, who followed, was the son of Henry David, tenth Earl of Buchan—a Scottish Peer. John Singleton Copley, Lord Lyndhurst, was the son of an American portrait painter. The father of Henry Brougham, Lord Brougham and Vaux, was a small North-country landowner.

Charles Christopher Pepys, Earl of Cottenham, was the son of Sir William Weller Pepys, Bart., a Master in Chancery; Thomas Wilde, Lord Truro, of an attorney-at-law, and Edward Burtenshaw Sugden, Lord St. Leonards, of a hair-dresser and barber. The father of Robert Monsey Rolfe, Lord Cranworth, was a Norfolk rector: Charles Thesiger, collector of Customs in the island of St. Vincent, was the father of the first Lord Chelmsford. Lord Campbell was the son of the Rev. Dr. George Campbell, minister of Cupar in the county of Fife; Richard Bethell, Lord Westbury, of a Bristol doctor; Hugh McCalmont Cairns, Earl Cairns, of a

Captain in the 47th Regiment of Foot; William Page Wood, Lord Hatherley, of Sir Matthew Wood, Alderman, Sheriff, and Lord Mayor of London.—*L.J., 1939, p. 289.*

—*And in this.*—Roundell Palmer, Lord Selborne, was the son the rector of Mixbury and Finmere, in the county of Oxford; Farrer, Lord Herschell, of the Rev. Haim Herschell, a Dissenting minister, who first saw light in Prussian Poland; and Hardinge Stanley Giffard, Earl of Halsbury, was the third son of Mr. Stanley Lees Giffard, LL.D., barrister-at-law and journalist.

Lord Halsbury saw our country and its laws safely into the twentieth century; his final retirement was in 1905. Robert Threshie Reid, Lord Loreburn, who succeeded him, was the son of a barrister, sometime C.J. of the Protectorate of the Ionian Isles. Lord Haldane's father was a Writer to the Signet; Lord Buckmaster's, a schoolmaster; Viscount Finlay was eldest of a doctor's large family of eleven; a barrister was the father of the Earl of Birkenhead; a city merchant of Lord Cave; Viscount Sankey of Moreton, is son of the late Mr. Thomas Sankey of that place; Quintin Hogg, philanthropist and father of Lord Hailsham, was a sugar merchant in a large and successful way; while Lord Maugham's father was legal adviser to the British Embassy in Paris.

On twentieth century statistics it would appear, therefore, that a lawyer is now more likely than a clergyman to become the parent of the holder of the Law's most glittering prize.—*L.J., 1939, p. 289.*

Lawyers and the Table.—If the biographers and critics of the old judges and practitioners speak truly, these worthies seem to have kept well in mind that verse from Ecclesiasticus which runs thus: "A cheerful and good heart will have a care of his meat and drink," a saying which in the mouth of our friend Dr. Johnson became somewhat coarsely translated into: "I look upon it that he who does not mind his belly will hardly mind anything else." How, then, does the matter stand with our great men of the past in the law? We read that Chief Justice Lee, who died in 1754, gained immense credit for an adequate knowledge of law by the sumptuousness and the frequency of the dinners with which he regaled his judicial brethren and those others whom he invited to his house. Of Thurlow it is said that he entertained "a somewhat too limited circle of friends with English fare and a superabundance of choice port." It is added that he was very particular about his fruit, few things angering him more than to

find inferior grapes or peaches placed before him. So irritated was he if this should happen that we are told that on one occasion when at Brighton, to the astonishment of the other guests, he threw the whole of a very fine dessert out of the window upon the Marine Parade. Of Baron Graham, who was appointed to the Bench of the Court of Exchequer in 1800, and whose universal urbanity and politeness were so marked that, as Jekyll humorously put it, "No one but his sempstress could ruffle him," we read, *apropos* the subject under consideration, that his particular weakness was for oysters, eaten as a preparatory whet to the appetite for dinner. It is said that on one occasion when he had been indulging in this preprandial exercise, he observed in his genial way that "oysters taken before dinner are said to sharpen the appetite, but I have just consumed half-a-barrel of fine natives, and, speaking honestly, I am bound to say that I don't feel quite so hungry as when I began" —a phenomenon not altogether unfamiliar even to the ordinary person.—*L.T., 1939, p. 291.*

Lord Ellenborough and Lord Eldon.—Just as quite ordinary mortals have their culinary preferences, so, too, it seems had our former Chief Justices and Lord Chancellors. Of Lord Ellenborough we read that his particular "wanity," as Sam Weller would have expressed it, was lobster sauce, and we are further told that on one occasion he was enabled to show from the judgment seat his regard for this delicacy. This was when he decided that those engaged in the lobster fishery were exempt from legal liability to impressment. "Is not," he asked, in the course of giving judgment, "the lobster fishery a fishery, and a most important fishery, of this kingdom, though carried on in shallow waters? The framers of the law well knew that the produce of the deep sea, without the produce of the shallow water, would be of comparatively small value, and intended that turbot, when placed upon our tables, should be flanked by good lobster sauce." Lord Eldon was equally fond of the table, but in his case there was a difference in taste very marked and, as some thought, somewhat derogatory to the exalted position which he occupied. His passion was liver and bacon. Being invited to dinner by Sir John Leach, Master of the Rolls, Lord Eldon replied as follows: "It will give me great pleasure to dine with you, and since you are good enough to ask me to order a dish that shall test your new chef's powers—I wish you'd tell your Frenchman to fry some liver and bacon for me." Sir John did not like this, and said: "Are you laughing at me or my cook?" thinking that the Chancellor was bent on ridiculing his luxurious mode of living. "At neither," answered the Chancellor,

with equal simplicity and truth; "I was only ordering the dish which I enjoy beyond all others."—*L.T., 1939, p. 291.*

Lord Stowell.—Lord Stowell, the brother of Lord Eldon, we associate chiefly with the exalted place he attained in admiralty and prize law, but he has other claims to remembrance. For example, to him we owe two classic phrases—one, "The elegant simplicity of the three per cents.," and the other, more germane to the subject now before us, "A dinner lubricates business." Like Eldon, he loved port, and in this connection the story has come down to us of the practice of the two brothers to dine together on the first day of term at a tavern in the neighbourhood of the Temple. In his old age Stowell was recalling these dinners to his son-in-law, Lord Sidmouth, when the latter observed, "You drank some wine together, I daresay." Stowell admitted that they did. Following up his previous question the son-in-law inquired, "Two bottles?" "More than that," was the reply. "What! three bottles?" again asked Lord Sidmouth, to which the answer was again, "More than that." This made the son-in-law open his eyes with astonishment. "By Jove, sir, you don't mean to say that you took four bottles?" By this time the old man was beginning to feel somewhat shamefaced, but he only said, "More; I mean to say we had more. Now don't ask any more questions!" It will not be forgotten by those who know their Boswell that Stowell got into trouble with Blackstone's family for telling Boswell that Blackstone, "a sober man, composed his Commentaries with a bottle of port before him, and found his mind invigorated and supported in the fatigue of his great work, by a temperate use of it." We are told that Stowell felt compelled to write to Blackstone's family to apologise for Boswell's anecdote, which, however, remains to this day in the great biography.—*L.T., 1939, p. 292.*

Thackeray's Testimony.—Every lawyer who has read Thackeray's classic, Pendennis, will recall the chapter entitled "The Knights of the Temple," wherein the hero is introduced to that part of the Bar student's curriculum which he enjoys much more than the subsequent interrogatories as to his professional knowledge, namely, the ancient practice of dining together. In the first evening when Pen dined in the hall of what is termed "the ancient and liberal Inn of the Upper Temple," he is seated next Lowton, a student of older standing by whom he is informed of the names of those seated at the high table. "There's Boosey, the bencher, the bald one sitting under the picture and 'aving soup; I wonder whether its turtle? They often 'ave turtle. Next is Balls, the

King's Counsel . . . That's oldGrump, the seni or of the Bar; they say he's dined here forty years. They often send 'em down their fish from the benchers to the senior table," and so on in that delectable style of which the author was a past-master. Thackeray himself liked a good dinner, and he knew how to set forth its attractions in his own inimitable fashion. At one time it is understood the dining in hall during term was the only essential for call to the English Bar. Those halcyon days are gone, but, happily, the dining is still insisted upon by the Benchers, and few there are who would recalcitrate against its maintenance. Long may it continue to form one of the necessary steps to the acquisition of the honourable status of a barrister.—*L.T., 1939, p. 292.*

Died at His Post.—Mr. Justice Stephen, of the New South Wales Supreme Court, who died suddenly at Sydney at the close of his summing-up in a libel action, has just added one more to the number of judges who have been struck down by death at their posts. It was while presiding in the House of Lords in place of Lord Eldon that Lord Alvanley, C.J., was seized with a malady which carried him off in three days. Lord Tenterden, C.J., was overtaken by his last illness while presiding at the great trial of the Mayor of Bristol. From his deathbed he continued to follow the course of the proceedings and in his last moments he seemed to fancy himself addressing a jury. Mr. Justice Hayes was stricken suddenly while unrobing after sitting in court at Westminster. Old Mr. Justice Manisty, another Victorian judge, worked on till he collapsed in court. The handwriting in his notebook up till the very last stroke was as delicate and distinct as if there remained to him years instead of hours of life. The death of Mr. Justice Talfourd while charging the grand jury at Stafford has been stamped on the memory of the legal profession by Lord Darling's descriptive poem. Only four years later a similar scene was enacted at Welshpool when Mr. Baron Watson was seized with apoplexy, dying on the morrow.—*S.J., 1939, p. 354.*

Fire Engines and Speed Limits.—Three classes of vehicles are exempt from the statutory speed limits which apply to so many others. They are the vehicles of fire brigades, police officers and ambulances. The exemption is not absolute, but only operates if, in the opinion of the magistrates, observance of the limit would be likely to hinder the use of the vehicle for its essential purpose on the occasion on which contravention of the law is alleged. This is, however, the only, or almost the only, concession given to these vehicles. For instance, they must respect traffic signs and may be held negligent if they disregard the red light's prohibition (*Ward*

v. *L.C.C.*, 1938, 1 All. E. R. 341). And, we suggest, the fact that these vehicles are free of speed limit when out on service is by no means conclusive if the charge be one of reckless or of careless driving. The point came up in the Sheriff's Court at Edinburgh this week (*Times*, May 16). The Sheriff was trying charges of reckless and, alternatively, of careless driving by a fireman which followed a fatal accident in the streets of Edinburgh. The learned Sheriff looked at the Act, observed the privilege, and found that the speed was not excessive. This may well be so: but we should doubt whether that fact is a good defence to a charge of reckless driving. Speed is only an ingredient in manner. There was, however, other evidence in answer to the charge made. All we wish to submit is that though a person is free of limits he may drive recklessly.—*L.J., 1939, p. 352.*

Children in the Streets.—The question of the rights and wrongs of children playing in the streets has always been important: and the recent rules about damages for the dead have added to its importance. Mr. Justice Hallett remarked on the matter during a case on circuit lately (*Times*, April 27), when he awarded a considerable sum to a bereaved father. His little son, who was killed by a local authority's vehicle, was four years old. Was he old enough to be capable of contributory negligence? The learned Judge said, according to the report, that the law did not recognise contributory negligence by children. If the report is correct, this was (if we may say so) giving too great a liberty to youth. A little child of three and a half years cannot be guilty of contributory negligence (*Gardner* v. *Grace*, 1 F. & F. 359), but a child of six may be so (*Fraser* v. *Edinburgh Tramways*, 20 Sch. R. 192). As a child grows older the Courts impute to him or her such a duty to know, see and take care as may reasonably be expected of a boy or girl of his or her age. Though always generous to children, the Courts have not gone so far as the learned Judge's observation suggests. However, he was dealing with a child of four; and what he said was correct for the case in hand. The law is well stated and the cases collected in *Halsbury, Hailsham edn.*, vol. 23, pp. 688-9. —*L.J., 1939, p. 353.*

BOOK REVIEWS.

THE LAW OF COPYRIGHT IN INDIA, by Harish Chandra Mital, B.A. (Hons.), LL.B., Punjab Civil Service (Judl.) and Bhagwan Das Jain, M.A., LL.B., Vakil, Delhi. Published by Eastern Law House, Calcutta. Price Rs. 10.

We have great pleasure in welcoming this book which so far as we are aware is the first Indian book on the subject of Copy-

right. There are leading text books on the subject in England and as the Imperial Copyright Act of 1911 applies to the whole of the British Dominions, the English treatises on the subject are of valuable authority in this country as well. There is however the Indian Copyright Act of 1914 which in some respects modifies and adds to the provisions of the Imperial Copyright Act. The learned authors have commented on both the enactments and have largely drawn from the English text books and decisions which will be found to be of great use. The subject being one with which the general practitioner may not be very familiar, this book of the authors will be greatly appreciated as a guide to the subject. There is a recent important decision of the House of Lords in *Caxton Publishing Company, Limited* v. *Sutherland Publishing Company,* (1939) A. C. 178, under Ss. 6, 7, 10 and 35 of the Imperial Copyright Act dealing with questions whether an action for conversion under S. 7 is an alternative or a cumulative remedy to an action for refringement under S. 6 of the Act. The decision also deals with the question whether S. 10 of the Act which prescribes a period of three years for an action for infringement of copyright applies also to an action for conversion under S. 7. The learned authors have expressed the opinion that it is doubtful whether the three years rule of limitation applies to an action under S. 7. The House of Lords in the above case have held that the rule of limitation applies equally to actions for conversions under S. 7. Their Lordships have also discussed the measure of damages for conversion in cases where a portion of the work has been incorporated in another work. This decision was given as early as November, 1938 and reported in (1938) W.N. 367 and 108 L.J. Ch. 5, though it is reported in the English Law Reports only in (1939) A.C. 178. As there is no index of cases in the book under review, we are not in a position to say whether this decision was available to the learned authors at the time when the book went to print.

THE INDIAN LIMITATION ACT (1908), by V. V. Chitaley, B.A., LL.B., Senior Advocate, Federal Court and Editor, All India Reporter, and K. N. Annaji Rao, B.A., B.L., Advocate, High Court, Madras. (Volume 3). Published by All India Reporter, Ltd., Nagpur. Rs. 30 per set.

We had occasion to review the first two volumes of this work which brought the commentaries on the Act down to the end of article 140 of the first schedule of the Limitation Act. The present volume completes the work and contains a copious general index of the subjects dealt with in all the volumes. There is an

appendix which gives the Punjab Limitation (Custom) Act I of 1920. There is however no index of cases referred to which we hoped would be at least introduced in this work of the authors. A general index of cases would have enhanced the value of the work where hundreds of cases have been cited and referred to in the body of the book. We hope that the work will meet with the popularity it deserves.

HIRE-PURCHASE, by Vidya Sagar, M.A., LL.B., Pleader, Delhi and C. L. Varma, B.A., LL.B. Published by Lawyer Brothers, Delhi. Price Rs. 4.

We are not aware of any Indian text book on the special branch of the law relating to hire-purchase agreements and we are glad that the learned authors have brought out a book on the subject which has become one of increasing interest in commercial transactions in this country, of late. The incidents of hire-purchase agreements and outright sales have to be distinctly kept in view. The learned authors have in the various chapters dealt with the subject in all its aspects and also the points arising out of the topics allied to the subject such as Bankruptcy, Insurance, Motor Vehicles Act and Rules. The appendix giving the forms of hire-purchase agreements will be found of practical utility. The statutory provisions having a bearing upon the subject are given in another appendix. We have every hope that the book will be found useful by lawyers and businessmen.

THE INDIAN INCOME-TAX ACT (XI OF 1922) (as amended up to date), by N. S. Raghavan, B.A., B.L., Advocate, High Court, Madras. Published by V. S. N. Chari & Co., Madras. Price Rs. 3.

The Income-tax Act which was complicated even as it stood before, has been made more difficult to understand by the laymen and businessmen, if not also by lawyers, by the recent amendments. A handy commentary of the Act with explanatory notes, like the book under review, will therefore be found useful to the assessees and lawyers and judges. The introduction which gives a connected view of the Income-tax Law in a short compass will make the subject intelligible to a lay-reader. We welcome the book under review which will be found useful for a clear understanding of the enactment.